



Citation: Qurashi v. Economical Insurance Company, 2023 ONLAT 22-002180/AABS

Licence Appeal Tribunal File Number: 22-002180/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Anjum Qurashi

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: Laura Goulet

APPEARANCES:

For the Applicant: Elena Pelz, Counsel

For the Respondent: Nivedita Misra, Counsel

HEARD: By way of written submissions

OVERVIEW

[1] Anjum Qurashi, the applicant, was involved in an automobile accident on September 13, 2019 (“subject accident”), and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Economical Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] The issues in dispute are:
- i. Are the applicant’s injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline (“MIG”) limit?
 - ii. Is the applicant entitled to \$3,302.28 for physiotherapy services proposed by Prime Health Care in a treatment plan submitted on September 17, 2019?
 - iii. Is the applicant entitled to \$2,594.00 for physiotherapy services proposed by Northview Physiotherapy in a treatment plan submitted on September 17, 2019?
 - iv. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant’s injuries are predominantly minor as defined in s.3 of the *Schedule* and therefore subject to treatment within the MIG funding limit.
- [4] The applicant remains within the MIG; however, the applicant is entitled to whatever amount remains within the \$3,500.00 MIG limit as of the date of this decision, as such benefits are deemed reasonable and necessary pursuant to s. 40(8) of the *Schedule*.

ANALYSIS

Applicability of the Minor Injury Guideline

- [5] For the following reasons, I find the applicant's injuries are predominantly minor as defined in the *Schedule* and are therefore subject to treatment within the MIG funding limit.
- [6] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured sustains impairments that are predominantly a minor injury. Section 3(1) defines a "minor injury" as "one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.
- [7] An insured may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, under s. 18(2), that they have a documented pre-existing injury or condition combined with compelling medical evidence stating that the condition precludes recovery if they are kept within the confines of the MIG. The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.
- [8] The applicant submits that her pre-existing back pain was exacerbated to the point where her injuries cannot be treated within the MIG. The respondent submits that the applicant suffered only minor injuries in the subject accident and that there is no compelling medical evidence to suggest that her pre-existing injuries were exacerbated by the accident.

The applicant does not have a pre-existing condition, documented by a medical practitioner prior to the accident, that would prevent maximal medical recovery under the MIG

- [9] I find the applicant has failed to prove on a balance of probabilities that she should be removed from the MIG as a result of any pre-existing conditions.
- [10] The standard for removing an impairment from the MIG on the basis of pre-existing conditions is well-defined and strict. A pre-existing condition will not automatically remove a person's impairment from the MIG. There must be compelling medical evidence stating that the condition precludes recovery if they are kept within the confines of the MIG.

- [11] The applicant submits that she sustained injuries to her head, neck, shoulders and back in the subject accident. Her position is that, although she suffered strain and sprain injuries in the accident, which are minor injuries as defined in the *Schedule*, her pre-existing back pain was exacerbated to the point where her injuries cannot be treated within the MIG. The respondent submits that the applicant suffered only minor injuries in the subject accident and that there is no compelling medical evidence to suggest that her pre-existing injuries were exacerbated by the accident.
- [12] I find that the evidence supports the applicant's allegation that she complained of pain in her back, hip, leg, and knee prior to the accident. References to complaints to those parts of her body appear throughout the medical documents submitted, including a complaint of severe radiating pain from her hip to the back of the knee and calf on November 3, 2016, an MRI on January 19, 2017 revealing anterolisthesis of the L4 and L5 secondary to facet joint arthritis, severe facet joint hypertrophy at this level and circumferential bulging disc, as well as a complaint on August 22, 2017 of pain and soreness in her left hip and leg, which was diagnosed as severe impingement of the L5 nerve root bilaterally, right and left.
- [13] Although I accept that the applicant's pre-existing medical condition is well documented by health practitioners in the years and months leading up to the subject accident, and, as a result of the subject accident, her pre-existing lumbar spine issues were exacerbated, I find that the medical records filed do not contain compelling evidence that the pre-accident impairments will preclude recovery if she is kept within the MIG. Some of the records from Northview Physiotherapy from September 19, 2019 to December 2021 indicate that the applicant was improving with therapy. This is evidence that her pre-accident impairments were not preventing recovery.
- [14] Further, a number of forms completed by treatment providers at Northview Physiotherapy, including an OCF-3 completed by Gursharan Khaira on January 9, 2020, state that prior to the accident, the applicant did not have any disease, condition or injury that could affect her response to treatment for the injuries. I find this evidence to be persuasive and supportive of the respondent's position that there were no pre-accident impairments which prevent recovery under the MIG.
- [15] The records of the family physician, Dr. Iram Kareemi Zando, do not support the applicant's position that there were pre-accident impairments preventing recovery under the MIG. The family doctor's medical records indicate that the applicant

was assessed multiple times between February 25, 2020 and June 26, 2020, and at none of these appointments was the subject accident mentioned as a cause of the applicant's pain complaints. Moreover, there is no indication in the family doctor's records that the applicant's pre-accident condition might negatively impact the applicant's recovery from the injuries she sustained in the subject accident.

- [16] Medical records were submitted by the applicant from Shams Clinic. On October 20, 2020, and on November 8, 2020, she complained of back pain for a few years with left thigh and leg radiculopathy that has been getting worse. There is no mention of the subject accident, or that her pre-accident impairments were preventing recovery under the MIG. As such, these records are not supportive of the applicant's position that her pre-accident condition prevents her recovery under the MIG.
- [17] On July 28, 2022, the applicant sought treatment at The Aga Khan University Hospital in Pakistan where she received an L4 laminectomy and a partial L5 laminectomy. The Summary on Discharge indicates that the applicant complained of left hip and leg pain for the past 8 years. She was diagnosed with L4/L5 Stenosis and she was admitted electively for surgery. There is no indication in the records that this was caused by or exacerbated by the subject accident, or that her pre-accident impairments were preventing recovery under the MIG. These records do not support a finding that the applicant's pre-existing condition was preventing recovery under the MIG.
- [18] The applicant also argues that the respondent failed to properly investigate her pre- and post-accident impairments by failing to schedule an independent examination. As such, the applicant was unable to substantiate her need to attend medical treatment and her lumbar pain worsened to the extent that she required surgery. The onus is on the applicant to demonstrate that her pre-existing injuries warrant removal from the MIG and the respondent's failure to investigate the applicant's allegation is not evidence that the allegation is correct and does not assist the applicant in satisfying her onus.
- [19] I find that the applicant has not demonstrated that she has a pre-existing condition, documented by a medical practitioner, that would prevent maximal medical recovery under the MIG. The evidence in the medical records does not satisfy me that the applicant's pre-existing injuries have been aggravated by the subject accident, or that the pre-existing injuries prevent her from achieving maximal recovery within the MIG.

Treatment plans

- [20] Section 40(8) of the *Schedule* provides that if it is determined that the MIG applies to an insured person following a dispute before the Tribunal, the benefits incurred under the MIG are deemed reasonable and necessary.
- [21] The applicant remains within the MIG; however, the applicant is entitled to whatever amount remains within the \$3,500.00 MIG limit as of the date of this decision, pursuant to s. 40(8) of the *Schedule*.

ORDER

- [22] The applicant's injuries are predominantly minor as defined in s.3 of the *Schedule* and therefore subject to treatment within the MIG limit. The applicant does not have a pre-existing condition, documented by a medical practitioner prior to the accident, that would prevent maximal medical recovery under the MIG.
- [23] The applicant is entitled to the benefits set out in the disputed treatment plans, once incurred, up to the remaining amount of the MIG limit, plus interest in accordance with s. 51 of the *Schedule*, as such benefits are deemed reasonable and necessary pursuant to s. 40(8) of the *Schedule*.
- [24] The application is dismissed.

Released: December 21, 2023



**Laura Goulet
Adjudicator**